$200 of long-term capital loss, $150 of ordinary income, and $50 of ordinary deductions. In determining A's allocable share of partnership ECTI, the amount of the long-term capital loss that may be taken into account pursuant to paragraph (b)(3)(v) of this section is limited to A's allocable share of gain from the sale or exchange of capital assets. Accordingly, A's share of partnership ECTI allocable under section 704 pursuant to §1.1446–2 is $100 ($150 of ordinary income less $50 of ordinary deductions, plus $50 of capital gain less $50 of capital loss).

*Example 2. Limitation on capital losses—special allocations.* PRS partnership has two equal partners, A and B. A and B are both nonresident aliens. A and B each provide PRS with a valid Form W–8BEN. PRS has the following annualized tax items for the relevant installment period, all of which are effectively connected with its U.S. trade or business: $200 of long-term capital gain, $200 of long-term capital loss, and $400 of ordinary income. A and B have equal shares in the ordinary income, however, pursuant to the partnership agreement, capital gains and losses are subject to special allocations. The long-term capital gain is allocable to A, and the long-term capital loss is allocable to B. Assume that these allocations are respected under section 704(b) and the regulations thereunder. Pursuant to paragraph (b)(3)(v) of this section, A's allocable share of partnership ECTI under §1.1446–2 is $400 (consisting of $200 of ordinary income and $200 of long-term capital gain), and B's allocable share of partnership ECTI is $200 (consisting of $200 of ordinary income).

*Example 3. Withholding tax obligation where partner has net operating losses.* PRS partnership has two equal partners, FC, a foreign corporation, and DC, a domestic corporation. FC and DC provide a valid Form W–8BEN and Form W–9, respectively, to PRS. Both FC and PRS are on a calendar taxable year. PRS is engaged in the conduct of a trade or business in the United States and for its first installment period during its taxable year has $100 of annualized ECTI that is allocable to FC. As of the beginning of the taxable year, FC had an unused effectively connected net operating loss carryover in the amount of $300. FC's net operating loss carryover is not taken into account in determining FC's allocable share of partnership ECTI under §1.1446–2 and, absent the application of §1.1446–6 (permitting a foreign partner to certify deductions and losses reasonably expected to be available to reduce the partner's U.S. income tax liability on the effectively connected income or gain allocable from the partnership), is not considered in computing the 1446 tax installment payment due on behalf of FC. Accordingly, PRS must pay 1446 tax with respect to the $100 of ECTI allocable to FC.

[T.D. 9200, 70 FR 28717, May 18, 2005, as amended by T.D. 9394, 73 FR 23074, Apr. 29, 2008]

### § 1.1446–3 Time and manner of calculating and paying over the 1446 tax.

(a) *In general*—(1) *Calculating 1446 tax.* This section provides rules for calculating, reporting, and paying over the section 1446 withholding tax (1446 tax). A partnership's 1446 tax equals the amount determined under this section and shall be paid in installments during the partnership's taxable year (see paragraph (d)(1) of this section for installment payment due dates), with any remaining tax due paid with the partnership's annual return required to be filed pursuant to paragraph (d) of this section. For these purposes, a partnership shall not take into account either a partner's liability for any other tax imposed under any other provision of the Internal Revenue Code (e.g., section 55 or 884) or a partner's distributive share of the partnership's tax credits when determining the amount of the partnership's 1446 tax.

(2) *Applicable percentage*—(i) *In general.* Except as provided in this paragraph (a)(2), in the case of a foreign partner that is a corporation for U.S. tax purposes, the applicable percentage is the highest rate of tax specified in section 11(b)(1) for such taxable year. Except as provided in this paragraph (a)(2) and §1.1446–5, in the case of a foreign partner that is not a corporation for U.S. tax purposes (e.g., a partnership, individual, trust or estate), the applicable percentage is the highest rate of tax specified in section 1.

(ii) *Special types of income or gain.* Except as otherwise provided, a partnership is permitted to consider as the applicable percentage under this paragraph (a)(2) the highest rate of tax applicable to a particular type of income or gain allocable to a partner (e.g., long-term capital gain allocable to a non-corporate partner, unrecaptured section 1250 gain, collectibles gain under section 1(h)), to the extent of a partner's allocable share of such income or gain. Consideration of the highest rate of tax applicable to a particular type of income or gain under

the previous sentence shall be made without regard to the amount of such partner's income. A partnership is not permitted to consider the highest rate of tax applicable to a particular type of income or gain under this paragraph (a)(2)(ii) if the application of the preferential rate depends upon the corporate or non-corporate status of the person reporting the income or gain and, either no documentation has been provided to the partnership under §1.1446–1 to establish the corporate or non-corporate status of the partner required to pay tax on the income or gain, or the partnership is otherwise required to compute and pay 1446 tax on such portion of the income or gain using the highest applicable percentage under section 1446(b). See e.g., §§1.1446–1(c)(3) (presumption of foreign status in the absence of documentation) and 1.1446–5(c)(2) (requirement to pay 1446 tax at higher of rates in section 1446(b) where a lower-tier partnership cannot reliably associate income with a partner of the upper-tier partnership).

(b) *Installment payments*—(1) *In general.* Except as provided in §1.1446–4 for certain publicly traded partnerships, a partnership must pay its 1446 tax by making installment payments of the 1446 tax based on the amount of partnership effectively connected taxable income (ECTI) allocable under section 704 to its foreign partners, without regard to whether the partnership makes any distributions to its partners during the partnership's taxable year. The amount of the installment payments is determined in accordance with this paragraph (b), and the tax must be paid at the times set forth in paragraph (d) of this section. Subject to paragraphs (b)(2)(v) and (b)(3)(ii) of this section, in computing its first installment of 1446 tax for a taxable year, a partnership must decide whether it will pay its 1446 tax for the entire taxable year by using the safe harbor set forth in paragraph (b)(3)(i) of this section, or by using one of several annualization methods available under paragraph (b)(2)(ii) of this section for computing partnership ECTI allocable to foreign partners. In the case of a partnership's underpayment of an installment of 1446 tax, the partnership shall be subject to an addition to the tax equal to the amount determined under section 6655, as modified by this section, as if such partnership were a corporation, as well as any other applicable interest and penalties. See §1.1446–3(f). Section 6425 (permitting an adjustment for an overpayment of estimated tax by a corporation) shall not apply to a partnership's payment of its 1446 tax.

(2) *Calculation*—(i) *Application of the principles of section 6655*—(A) *In general.* Installment payments of 1446 tax required during the partnership's taxable year are based upon partnership ECTI for the portion of the partnership taxable year to which the payments relate, and, except as set forth in this paragraph (b)(2) or paragraph (b)(3) of this section, shall be calculated using the principles of section 6655. The principles of section 6655, except as otherwise provided in §1.6655–2, are applied to annualize the partnership's items of effectively connected income, gain, loss, and deduction to determine each foreign partner's allocable share of partnership ECTI. Each foreign partner's allocable share of partnership ECTI is then multiplied by the relevant applicable percentage for the type of income allocable to the foreign partner under paragraph (a)(2) of this section. The respective 1446 tax amounts are then added for each foreign partner to yield an annualized 1446 tax with respect to such partner. The installment of 1446 tax due with respect to a foreign partner equals the excess of the section 6655(e)(2)(B)(ii) percentage of the annualized 1446 tax for that partner (or, if applicable, the adjusted seasonal amount) for the relevant installment period, over the aggregate amount of 1446 tax installment payments previously paid with respect to that partner during the partnership's taxable year. The partnership's total 1446 tax installment payment equals the sum of the installment payments due for such period on behalf of all the partnership's foreign partners.

(ii) *Annualization methods.* A partnership that decides to annualize its income for the taxable year shall use one of the annualization methods set forth in section 6655(e) and the regulations thereunder, and as described in the forms and instructions for Form 8804,

''Annual Return for Partnership Withholding Tax (Section 1446),'' Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' and Form 8813, ''Partnership Withholding Tax Payment Voucher.''

(iii) *Partner's estimated tax payments.* In computing its installment payments of 1446 tax, a partnership may not take into account a partner's estimated tax payments.

(iv) *Partner whose interest terminates during the partnership's taxable year.* If a partner's interest in the partnership terminates prior to the end of the partnership's taxable year, the partnership shall take into account the income that is allocable to the partner for the portion of the partnership taxable year that the person was a partner.

(v) *Exceptions and modifications to the application of the principles under section 6655.* To the extent not otherwise modified in §§1.1446–1 through 1.1446–7 or inconsistent with those rules, the principles of section 6655 apply to the calculation of the installment payments of 1446 tax made by a partnership as set forth in this paragraph (b)(2)(v).

(A) *Inapplicability of special rules for large corporations.* The principles of section 6655(d)(2), concerning large corporations (as defined in section 6655(g)(2)), shall not apply.

(B) *Inapplicability of special rules regarding early refunds.* The principles of section 6655(h), applicable to amounts excessively credited or refunded under section 6425, shall not apply. See paragraph (b)(1) of this section providing that section 6425 shall not apply for purposes of the 1446 tax. This paragraph (b)(2)(v)(B) shall apply to 1446 tax paid by a partnership or nominee, as well as to amounts that a partner is deemed to have paid for estimated tax purposes by reason of the partnership's or nominee's 1446 tax payments under §1.1446–3(d)(1)(i).

(C) *Period of underpayment.* The period of the underpayment set forth in section 6655(b)(2) shall end on the earlier of the 15th day of the 4th month following the close of the partnership's taxable year (or, in the case of a partnership described in §1.6081–5(a)(1) of this chapter, the 15th day of the 6th month following the close of the partnership's taxable year), or with respect to any portion of the underpayment, the date on which such portion is paid.

(D) *Other taxes.* Section 6655 shall be applied without regard to any references to alternative minimum taxable income and modified alternative minimum taxable income.

(E) *1446 tax treated as tax under section 11.* The principles of section 6655(g)(1) shall be applied to treat the 1446 tax as a tax imposed by section 11, and any partnership required to pay such tax shall be treated as a corporation.

(F) *Application of section 6655(f).* A partnership subject to section 1446 shall apply section 6655(f) after aggregating the 1446 tax due (or any installment of such tax) for all its foreign partners. See §1.1446–6(c)(1)(ii) for an exception to this rule when a nonresident alien partner certifies to the partnership that the partnership investment is the nonresident alien partner's only activity giving rise to effectively connected items.

(G) *Application of section 6655(i).* If a partnership has a taxable year of less than 12 months, the partnership is required to pay 1446 tax (including installments of such tax) in accordance with this section §1.1446–3, if the partnership has ECTI allocable under section 704 to foreign partners. In such a case, the partnership shall adjust its installment payments of 1446 tax in a reasonable manner (e.g., the annualized amounts of ECTI estimated to be allocable to a foreign partner, and the section 6655(e)(2)(B)(ii) percentage to be applied to each installment) to account for the short-taxable year. However, if the partnership's taxable year is a period of less than 4 months, the partnership shall not be required to make installment payments of 1446 tax, but will only be required to file Forms 8804 and 8805 in accordance with this section §1.1446–3, and report and pay the appropriate 1446 tax for the short-taxable year.

(H) *Current year tax safe harbor.* The safe harbor set forth in section 6655(d)(1)(B)(i) shall apply to a partnership subject to section 1446.

(I) *Prior year tax safe harbor.* The safe harbor set forth in section 6655(d)(1)(B)(ii) shall not apply and instead the safe harbor set forth in paragraph (b)(3) of this section applies.

(3) *1446 tax safe harbor*—(i) *In general.* The addition to tax under section 6655 shall not apply to a partnership with respect to a current installment of 1446 tax if—

(A) The average of the amount of the current installment and prior installments during the taxable year is at least 25 percent of the total 1446 tax (without regard to §1.1446–6) for the prior taxable year;

(B) The prior taxable year consisted of twelve months;

(C) The partnership timely files (including extensions) an information return under section 6031 for the prior year; and

(D) The amount of ECTI for the prior taxable year is not less than 50 percent of the ECTI shown on the annual return of section 1446 withholding tax that is (or will be) timely filed for the current year.

(ii) *Permission to change to standard annualization method.* Except as otherwise provided in this paragraph (b)(3)(ii), if a partnership decides to pay its 1446 tax for the first installment period based upon the safe harbor method set forth in paragraph (b)(3)(i), the partnership must use the safe harbor method for each installment payment made during the partnership's taxable year. Notwithstanding the previous sentence, if a partnership paying over 1446 tax during the taxable year pursuant to this paragraph (b)(3) determines during an installment period (based upon the standard option annualization method set forth in section 6655(e) and the regulations thereunder, as modified by the forms and instructions to Forms 8804, 8805, and 8813) that it will not qualify for the safe harbor in this paragraph (b)(3) because the prior year's ECTI will not meet the 50-percent threshold in paragraph (b)(3)(i)(D) of this section, then the partnership is permitted, without being subject to the addition to the tax under section 6655 (as applied through this section), to pay over its 1446 tax for the period in which such determination is made, and all subsequent installment periods during the taxable year, using the standard option annualization method. A change pursuant to this paragraph shall be disclosed in a statement attached to the Form 8804 the partnership files for the taxable year and shall include information to allow the IRS to determine whether the change was appropriate.

(c) *Coordination with other withholding rules*—(1) *Fixed or determinable, annual or periodical income.* Fixed or determinable, annual or periodical income subject to tax under section 871(a) or section 881 is not subject to withholding under section 1446, and such income is subject to the withholding requirements of sections 1441 and 1442 and the regulations thereunder.

(2) *Real property gains*—(i) *Domestic partnerships.* Except as otherwise provided in this paragraph (c)(2), a domestic partnership that is otherwise subject to the withholding requirements of sections 1445 and 1446 will be subject to the payment and reporting requirements of section 1446 only and not section 1445(e)(1) and the regulations thereunder, with respect to partnership gain from the disposition of a U.S. real property interest (as defined in section 897(c)). A partnership that has complied with the requirements of section 1446 will be deemed to satisfy the withholding requirements of section 1445 and the regulations thereunder. However, a domestic partnership that would otherwise be exempt from section 1445 withholding by operation of a nonrecognition provision must continue to comply with the requirements of §1.1445–5(b)(2). In the event that amounts are withheld under section 1445(e) at the time of the disposition of a U.S. real property interest, such amounts may be credited against the partnership's 1446 tax. A partnership that fails to comply fully with the requirements of section 1446 pursuant to this paragraph (c)(2) shall be liable for any unpaid 1446 tax and subject to any applicable addition to the tax, interest, and penalties under section 1446. See §1.1446–4(f)(4) for rules coordinating the withholding liability of publicly traded partnerships under sections 1445 and 1446.

(ii) *Foreign partnerships.* A foreign partnership that is subject to withholding under section 1445(a) during its taxable year may credit the amount withheld under section 1445(a) against its section 1446 tax liability for that taxable year only to the extent such

amount is allocable to foreign partners.

(3) *Coordination with section 1443.* A partnership that has ECTI allocable under section 704 to a foreign organization described in section 501(c) shall be required to pay 1446 tax on such ECTI only to the extent such ECTI is includible under section 512 and section 513 in computing the organization's unrelated business taxable income. The certificate procedure available under §1.1441–9(b)(1) by which a partner may set forth the amounts it believes will and will not be includible in its computation of unrelated business taxable income under section 512 and section 513 shall also apply to a partner in a partnership subject to section 1446. Such certificate shall be made by a partner in the same manner as under §1.1441–9(b)(2). A partnership that determines that the partner's certificate as to certain partnership items is unreliable or lacking must presume, consistent with §1.1441–9(b)(3) (regarding amounts includible under section 512 in computing the organization's unrelated business taxable income), that such partnership items would be includible in computing the partner's UBTI.

(d) *Reporting and crediting the 1446 tax*—(1) *Reporting 1446 tax.* This paragraph (d) sets forth the rules for reporting and crediting the 1446 tax paid by a partnership. To the extent that 1446 tax is paid on ECTI allocable to a domestic trust (including a grantor or other person treated as an owner of a portion of such trust) or a grantor or other person treated as the owner of a portion of a foreign trust, the rules of this paragraph (d) applicable to a foreign trust or its beneficiaries shall be applied to such domestic or foreign trust and its beneficiaries or owners, as applicable, so that appropriate credit for the 1446 tax may be claimed by the trust, beneficiary, grantor, or other person.

(i) *Reporting of installment tax payments and notification to partners of installment tax payments.* Each partnership required to make an installment payment of 1446 tax must file Form 8813, ''Partnership Withholding Tax Payment Voucher (Section 1446),'' in accordance with the instructions to that form. Form 8813 is generally used to transmit an installment payment of 1446 tax to the IRS with respect to partnership ECTI estimated to be allocated to foreign partners. However, see §1.1446–6(d)(3) (relating to circumstances where a partnership must file Form 8813 when no payment is required under section 1446). Except as provided in this section, a partnership must notify each foreign partner of the 1446 tax paid on the partner's behalf when the partnership makes an installment payment of 1446 tax. The notice required to be given to a foreign partner under the previous sentence must be provided within 10 days of the installment payment due date, or, if paid later, the date such installment payment is made. A foreign partner generally may credit an installment of 1446 tax paid by the partnership on the partner's behalf against the partner's estimated tax that the partner must pay during the partner's own taxable year. See §1.1446–5(b) (relating to tiered partnership structures). However, a foreign partner may not obtain an early refund of such amounts under the estimated tax rules. See §1.1446–3(b)(2)(v)(B). See paragraph (d)(2) of this section for the amount of 1446 tax a partner may credit against its U.S. income tax liability. No particular form is required for a partnership's notification to a foreign partner, but each notification must include the partnership's name, the partnership's Taxpayer Identification Number (TIN), the partnership's address, the partner's name, the partner's TIN, the partner's address, the annualized ECTI estimated to be allocated to the foreign partner (or prior year's safe harbor amount, if applicable), and the amount of tax paid on behalf of the partner for both the current and any prior installment periods during the partnership's taxable year. Notwithstanding any other provision of this paragraph (d), a withholding agent is not required to notify a partner of an installment of 1446 tax paid on the partner's behalf, unless requested by the partner, if—

(A) The partnership's agent responsible for providing notice pursuant to this paragraph is the same person that acts as an agent of the foreign partner for purposes of filing the partner's U.S.

Federal income tax return for the partner's taxable year that includes the installment payment date; or

(B) The partnership has at least 500 foreign partners and the total 1446 tax that the partnership determines will be required to be paid for the partnership taxable year on behalf of such partner (based on paragraph (b)(2)(ii) or (3) of this section) with respect to the partner's allocable share of ECTI is less than $1,000.

(ii) *Payment due dates.* The 1446 tax is calculated based on partnership ECTI allocable under section 704 to foreign partners during the partnership's taxable year, as determined under section 706. Installment payments of the 1446 tax generally must be made during the partnership's taxable year in which such income is derived. A partnership must pay to the Internal Revenue Service a portion of its estimated annual 1446 tax in installments on or before the 15th day of the fourth, sixth, ninth, and twelfth months of the partnership's taxable year as provided in section 6655. Any additional amount determined to be due is to be paid with the filing of the annual return of tax required under paragraph (d)(1)(iii) of this section and clearly designated as for the prior taxable year. Form 8813 should not be submitted for a payment made under the preceding sentence.

(iii) *Annual return and notification to partners.* Every partnership (except a publicly traded partnership subject to §1.1446–4) that has effectively connected gross income for the partnership's taxable year allocable under section 704 to one or more of its foreign partners (or is treated as having paid 1446 tax under §1.1446–5(b)), must file Form 8804, ''Annual Return for Partnership Withholding Tax (Section 1446).'' Additionally, every partnership that is required to file Form 8804 also must file Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' for each of its foreign partners on whose behalf it paid 1446 tax, and furnish Form 8804 and the Forms 8805 to the Internal Revenue Service and the respective Form 8805 to each of its partners. Notwithstanding the previous sentence, a partnership that considers a foreign partner's certificate under §1.1446–6 when computing its 1446 tax on Form 8804 is required to furnish such partner and the Internal Revenue Service a Form 8805, even if the form submitted to the partner shows no payment of 1446 tax on behalf of the partner. Forms 8804 and 8805 are separate from Form 1065, ''U.S. Return of Partnership Income,'' and the attachments thereto, and are not to be filed as part of the partnership's Form 1065. A partnership must generally file Forms 8804 and 8805 on or before the due date for filing the partnership's Form 1065. See §1.6031(a)–1(c) for rules concerning the due date of a partnership's Form 1065. However, with respect to partnerships described in §1.6081–5(a)(1), Forms 8804 and 8805 are not due until the 15th day of the sixth month following the close of the partnership's taxable year.

(iv) *Information provided to beneficiaries of foreign trusts and estates.* A foreign trust or estate that is a partner in a partnership subject to withholding under section 1446 shall be provided Form 8805 by the partnership. The foreign trust or estate must provide to each of its beneficiaries a copy of the Form 8805 furnished by the partnership. In addition, the foreign trust or estate must provide a statement for each of its beneficiaries to inform each beneficiary of the amount of the credit that may be claimed under section 33 (as determined under this section) for the 1446 tax paid by the partnership. Until an official Internal Revenue Service form is available, the statement from a foreign trust or estate that is described in this paragraph (d)(1)(iv) shall contain the following information—

(A) Name, address, and TIN of the foreign trust or estate;

(B) Name, address, and TIN of the partnership;

(C) The amount of the partnership's ECTI allocated to the foreign trust or estate for the partnership taxable year (as shown on the Form 8805 provided to the trust or estate);

(D) The amount of 1446 tax paid by the partnership on behalf of the foreign trust or estate (as shown on Form 8805 to the trust or estate);

(E) Name, address, and TIN of the beneficiary of the foreign trust or estate;

(F) The amount of the partnership's ECTI allocated to the trust or estate for purposes of section 1446 that is to be included in the beneficiary's gross income; and

(G) The amount of 1446 tax paid by the partnership on behalf of the foreign trust or estate that the beneficiary is entitled to claim on its return as a credit under section 33.

(v) *Attachments required of foreign trusts and estates.* The statement furnished to each foreign beneficiary under this paragraph (d)(1) must also be attached to the foreign trust or estate's U.S. Federal income tax return filed for the taxable year that includes the installment periods to which the statement relates.

(vi) *Attachments required of beneficiaries of foreign trusts and estates.* The beneficiary of the foreign trust or estate must attach the statement provided by the trust or estate pursuant to paragraph (d)(1)(iv) of this section, along with a copy of the Form 8805 furnished by the partnership to such trust or estate, to its U.S. income tax return for the year in which it claims a credit for the 1446 tax. See §1.1446–3(d)(2)(ii) for additional rules regarding a partner or beneficial owner claiming a credit for the 1446 tax.

(vii) *Information provided to beneficiaries of foreign trusts and estates that are partners in certain publicly traded partnerships.* A statement similar to the statement required by paragraph (d)(1)(iv) of this section shall be provided by trusts or estates that hold interests in publicly traded partnerships subject to §1.1446–4.

(2) *Crediting 1446 tax against a partner's U.S. tax liability*—(i) *In general.* A partnership's payment of 1446 tax on the portion of ECTI allocable to a foreign partner generally relates to the partner's U.S. income tax liability for the partner's taxable year in which the partner is subject to U.S. tax on that income. Subject to paragraphs (d)(2)(ii) and (iii) of this section, a partner may claim as a credit under section 33 the 1446 tax paid by the partnership with respect to ECTI allocable to that partner. The partner may not claim an early refund of these amounts under the estimated tax rules. See paragraph (d)(1)(i) of this section regarding a partner's ability to credit an installment of 1446 tax paid on the partner's behalf against the partner's estimated tax payments due for the taxable year. See also §1.1446–5(b) (relating to tiered partnership structures).

(ii) *Substantiation for purposes of claiming the credit under section 33.* A partner may credit the amount paid under section 1446 with respect to such partner against its U.S. income tax liability only if it attaches proof of payment to its U.S. income tax return for the partner's taxable year in which the items comprising such partner's allocable share of partnership ECTI are included in the partner's income. Except as provided in the next sentence, proof of payment consists of a copy of the Form 8805 the partnership provides to the partner (or in the case of a beneficiary of a foreign trust or estate, the statement required under paragraph (d)(1)(iv) or (vii) of this section to be provided by such trust or estate and a copy of the related Form 8805 furnished to such trust or estate), but only if the name and TIN on the Form 8805 (or the statement provided by a foreign trust or estate) match the name and TIN on the partner's U.S. tax return, and such form (or statement) identifies the partner (or beneficiary) as the person entitled to the credit under section 33. In the case of a partner of a publicly traded partnership that is subject to withholding on distributions under §1.1446–4, proof of payment consists of a copy of the Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' provided to the partner by the partnership.

(iii) *Special rules for apportioning the tax credit under section 33*—(A) *Foreign trusts and estates.* Section 1446 tax paid on the portion of ECTI allocable under section 704 to a foreign trust or estate that the foreign trust or estate may claim as a credit under section 33 shall bear the same ratio to the total 1446 tax paid on behalf of the trust or estate as the total ECTI allocable to such trust or estate and not distributed (or treated as distributed) to the beneficiaries of such trust or estate, and, accordingly not deducted under section 651 or section 661 in calculating the trust or estate's taxable income, bears to the total ECTI allocable to such

trust or estate. The 1446 tax that a foreign trust or estate is not entitled to claim as a credit under this paragraph (d)(2) may be claimed as a credit by the beneficiary of such trust or estate that includes the partnership ECTI allocated to the trust or estate in gross income under section 652 or section 662 (whether distributed or deemed to be distributed and with the same character as effectively connected income as in the hands of the trust or estate). In the case of a foreign trust or estate with multiple beneficiaries, each beneficiary may claim a portion of the 1446 tax that may be claimed by all beneficiaries under the previous sentence as a credit in the same proportion as the amount of ECTI included in such beneficiary's gross income bears to the total amount of ECTI included by all beneficiaries. The trust or estate must provide each beneficiary with a copy of the Form 8805 provided to it by the partnership and prepare the statement required by paragraph (d)(1)(iv) of this section.

(B) *Use of domestic trusts to circumvent section 1446.* This paragraph (d)(2)(iii)(B) shall apply if a partnership knows or has reason to know that a foreign person holds its interest in the partnership through a domestic trust, and such domestic trust was formed or availed of with a principal purpose of avoiding the 1446 tax. The use of a domestic trust may have a principal purpose of avoiding the 1446 tax even though the tax avoidance purpose is outweighed by other purposes when taken together. In such case, a partnership is required to pay 1446 tax under this paragraph as if the domestic trust was a foreign trust for purposes of section 1446 and the regulations thereunder. Accordingly, all applicable additions to the tax, interest, and penalties shall apply to the partnership for its failure to pay 1446 tax under this paragraph (d)(2)(iii)(B), commencing with the installment period during which the partnership knows or has reason to know that this paragraph (d)(2)(iii)(B) applies. A publicly traded partnership within the meaning of §1.1446–4 (or a nominee required to pay 1446 tax under §1.1446–4) will not be considered to know or have reason to know a domestic trust is being used to avoid the 1446 tax under this paragraph (d)(2)(iii)(B), provided the interest held in such entity by the domestic trust is publicly traded.

(iv) *Refunds to withholding agent.* A withholding agent (*i.e.*, the partnership) may obtain a refund of the 1446 tax paid (or deemed paid under §1.1446–5(b)) to the extent of the excess of the amount paid to the Internal Revenue Service by the partnership, over the partnership's section 1446 tax liability as determined by the sum of the total tax creditable to each partner indicated on all Forms 8805 for the taxable year. If a partnership issues Form 8805 to a partner, then the partnership may not claim a refund for any amount of tax shown on that form as paid on behalf of the partner. If a partnership incorrectly withholds upon a United States person under section 1446 of the Internal Revenue Code and issues a Form 8805 to that person, the partnership may not file for a refund of the amount incorrectly withheld. Instead, the United States person may file for a refund of that amount on its annual return. For rules concerning refunds to withholding agents who pay 1446 tax on distributions of effectively connected income or gain under §1.1446–4 (*i.e.*, publicly traded partnerships or nominees), see §1.1464–1.

(v) *1446 tax treated as cash distribution to partners.* Except as otherwise provided in this paragraph (d)(2)(v), a partnership's payment of 1446 tax on behalf of a foreign partner is treated under section 1446(d) and this section as a deemed distribution of money to the partner on the earliest of the day on which the partnership paid the tax, the last day of the partnership's taxable year for which the amount was paid, or the last day on which the partner owned an interest in the partnership during the taxable year for which the tax was paid. However, a deemed distribution of money under section 1446(d) resulting from a partnership's installment payment of 1446 tax on behalf of a partner is treated as an advance or drawing of money under §1.731–1(a)(1)(ii) to the extent of the partner's distributive share of income for the partnership taxable year. The rule treating a deemed distribution as an advance or drawing of money under

this paragraph (d)(2)(v) applies only for purposes of determining the tax results of the deemed distribution to the partner under sections 705, 731, and 733, and does not affect the date that the partnership is considered to have paid any installment of 1446 tax for purposes of section 6655 (as applied through this section) or the date a foreign partner is deemed to have paid estimated tax by reason of such installment payment. See paragraph (d)(1)(i) of this section (permitting a partner to credit 1446 tax paid on the partner's behalf against the partner's estimated tax obligation). An amount treated as an advance or drawing of money is taken into account at the end of the partnership taxable year or the last day during the partnership's taxable year on which the partner owned an interest in the partnership. Any 1446 tax paid after the close of the partnership's taxable year, including amounts paid with the filing of Form 8804, that are on account of partnership ECTI allocated to partners for the prior taxable year shall be treated under section 1446(d) and this section as a distribution from the partnership on the earlier of the last day of the partnership's prior taxable year for which the tax is paid, or the last day in such prior taxable year on which such foreign partner held an interest in the partnership.

(vi) *Examples.* The following examples illustrate the application of this section. In considering the examples, disregard the potential application of paragraph (b)(2)(v)(F) of this section (relating to the *de minimis* exception to paying 1446 tax). The examples are as follows:

*Example 1. Simple trust that reports entire amount of ECTI.* PRS is a partnership that has two partners, FT, a foreign trust, and A, a U.S. person. FT is a simple trust under section 651. FT and A each provide PRS with a valid Form W–8BEN and Form W–9, respectively. FT has one beneficiary, NRA, a nonresident alien. PRS and FT each maintain a calendar taxable year. PRS estimated for each installment period during the partnership's taxable year that FT would be allocated $100 of ECTI for the taxable year, and that all such ECTI would be ordinary in character. Assume that the allocation of the $100 would be respected under section 704(b) and the regulations thereunder. PRS pays installments of 1446 tax based upon its estimates and timely pays a total of $35 of 1446 tax over the course of the partnership's taxable year ($100 ECTI × .35). Assume that PRS' estimates of ECTI allocable to FT during the taxable year equal the actual amount of ECTI allocable to FT for the taxable year. Assume also that FT's only income for the taxable year is the $100 of income from PRS, and that, pursuant to the terms of the trust's governing instrument and local law, the $100 of ECTI is not included in FT's fiduciary accounting income and the deemed distribution of the $35 withholding tax paid under paragraph (d)(2)(v) of this section is not included in FT's fiduciary accounting income. Accordingly, the $100 of ECTI is not income required to be distributed by FT, and FT may not claim a deduction under section 651 for this amount. FT must report the $100 of ECTI in its gross income and may claim a credit under section 33 as determined under paragraph (d)(2)(iii) of this section of $35 for the 1446 tax paid by PRS. NRA is not required to include any of the ECTI in gross income and accordingly may not claim a credit for any amount of the $35 of 1446 tax PRS paid.

*Example 2. Simple trust that distributes a portion of ECTI to the beneficiary.* Assume the same facts as in *Example 1*, except that PRS distributes $60 to FT, which FT includes in its fiduciary accounting income under local law. FT will report the $100 of ECTI in its gross income and may claim a deduction for the $60 required to be distributed under section 651(a) to NRA. Pursuant to paragraph (d)(2)(iii) of this section, FT may claim a $14 credit under section 33 for the 1446 tax PRS paid ($40/$100 multiplied by $35). NRA is required to include the $60 of the ECTI in gross income under section 652 (as ECTI) and may claim a $21 credit under section 33 for the 1446 tax PRS paid ($35 less $14 or $60/$100 multiplied by $35).

*Example 3. Complex trust that distributes entire ECTI to the beneficiary.* Assume the same facts as in *Example 1*, except that FT is a complex trust under section 661. PRS distributes $60 to FT, which FT includes in its fiduciary accounting income. FT distributes the $60 of fiduciary accounting income to NRA and also properly distributes an additional $40 to NRA from FT's principal. FT will report the $100 of ECTI in its gross income and may deduct the $60 required to be distributed to NRA under section 661(a)(1) and may deduct the $40 distributed to NRA under section 661(a)(2). Pursuant to paragraph (d)(2)(iii) of this section, FT may not claim a credit under section 33 for any of the $35 of 1446 tax paid by PRS. NRA is required to include $100 of the ECTI in gross income under section 662 (as ECTI) and may claim a $35 credit under section 33 for the 1446 tax paid by PRS ($35 less $0).

(e) *Liability of partnership for failure to withhold*—(1) *In general.* Every partnership required to pay 1446 tax is made liable for that tax by section 1461. Therefore, a partnership that is required to pay 1446 tax but fails to do so, or pays less than the amount required under this section, is liable under section 1461 for the payment of the tax required to be withheld under chapter 3 of the Internal Revenue Code and the regulations thereunder unless, and to the extent, the partnership can demonstrate pursuant to paragraph (e)(2) of this section, to the satisfaction of the Commissioner or his delegate, that a foreign partner has paid the full amount of tax required to be paid by such partner to the Internal Revenue Service. See paragraph (e)(3) of this section and section 1463 regarding a partnership's liability for penalties and interest even though a foreign partner has satisfied the underlying tax liability. See also §1.1461–3 for applicable penalties when a partnership fails to pay 1446 tax. See paragraph (b) of this section for an addition to the tax under section 6655 when there is an underpayment of 1446 tax.

(2) *Proof that tax liability has been satisfied and deemed payment of 1446 tax.* Proof of payment of tax may be established for purposes of paragraph (e)(1) of this section consistent with §1.1445–1(e)(3). Under that standard, a partnership must provide sufficient information to the IRS to determine that the partner's tax liability was satisfied or established to be zero in accordance with the rules of this section. Under this section, a partnership's liability for 1446 tax shall be deemed to have been satisfied (deemed payment), to the extent of the 1446 tax due with respect to the ECTI allocable to a foreign partner, on the later of the date that such partner is considered to have paid all tax that is required to be shown on such partner's U.S. income tax return under section 6513(a) and (b)(2) (prescribing the date tax is considered paid for purposes of sections 6511(b)(2), (c), and 6512), or the last date for payment of the 1446 tax without extensions (the unextended due date for Form 8804). The deemed payment rule of this paragraph (e)(2) shall apply for purposes sections of 1446, 1461, and 1463, and any additions to the tax, interest, or penalties potentially applicable to such partnership under section 1446, including sections 6601, 6651, and 6655. Any deemed payment of 1446 tax under this paragraph (e)(2) shall not be treated as a deemed distribution under section 1446(d) and this section.

(3) *Liability for interest, penalties, and additions to the tax*—(i) *Partnership.* Notwithstanding paragraph (e)(2) of this section, a partnership that fails to pay 1446 tax is not relieved from liability under section 6655 (as applied through this section) or for interest under section 6601, when applicable. See §1.1463–1. Such liability may exist even if there is no underlying tax liability due from a foreign partner on its allocable share of partnership ECTI. The addition to the tax under section 6655 or the interest charge under section 6601 that is required by those sections shall be imposed as set forth in those sections, as modified by this section. The section 6601 interest charge shall accrue beginning on the last date prescribed for payment of the 1446 tax due under section 1461 (which is the due date, without extensions, for filing Form 8804). The section 6601 interest charge shall stop accruing on the 1446 tax liability on the date, and to the extent, that the unpaid tax liability under section 1446 is satisfied (or is deemed satisfied under this paragraph (e)). Further, a partnership's liability under section 6655 (as applied through this section) for any underpaid installment payment shall accrue beginning on the relevant installment payment date, and shall stop accruing on the earlier of the date (and to the extent) that the 1446 tax liability is actually satisfied or the date prescribed in paragraph (b)(2)(v)(C) of this section. See paragraph (e)(4) of this section for examples illustrating that a partner's payment of estimated tax has no effect on the partnership's calculation of its addition to the tax under section 6655 and this section. See §1.1461–3 for a list of the additions to tax, interest, and penalties that may apply to a partnership that fails to comply with section 1446. See §1.1446–6(d)(2)(i) for exceptions to the application of the addition to the tax under section 6655 (as applied

through this section) when a partnership reasonably relies on a foreign partner's certificate to reduce 1446 tax.

(ii) *Foreign partner.* A foreign partner is permitted to reduce any addition to the tax under section 6654 or section 6655 by the amount of any section 6655 addition to the tax paid by the partnership with respect to the partnership's failure to pay adequate installment payments of the 1446 tax on ECTI allocable to the foreign partner.

(4) *Examples.* The following examples illustrate the application of this section. In considering the examples, disregard the potential application of paragraph (b)(2)(v)(F) of this section (relating to the *de minimis* exception to paying 1446 tax). Further, in each of the examples where a partnership is deemed to have paid 1446 tax with respect to ECTI allocable to a partner, it is assumed that the partnership has presented to the IRS the appropriate information under paragraph (e)(2) of this section for the IRS to conclude that the deemed payment is appropriate. The examples are as follows:

*Example 1. Foreign partnership fails to pay 1446 tax and sole foreign partner fails to pay all tax required to be shown on partner's U.S. income tax return.* (i) PRS is a foreign partnership engaged in a trade or business in the United States and has two equal partners, A, a U.S. person, and B, a nonresident alien. PRS is described in §1.6081–5(a) (PRS keeps its books and records outside the United States and Puerto Rico) and, therefore, is required to file Form 8804 by the 15th day of the 6th month following the close of its taxable year. Both partners and PRS are calendar year taxpayers. PRS has received a valid Form W–9 and W–8BEN from A and B, respectively, but has not received any other documents or certificates. B is engaged in multiple trades or businesses (including the PRS partnership) that give rise to effectively connected income. PRS will use an acceptable annualization method under this section for computing its 1446 tax.

(ii) In PRS's first year of operations (Year 1), PRS estimates for each installment period described in §1.1446–3 that B will be allocated $100 of ordinary ECTI for the taxable year. Therefore, for each installment period PRS is required to pay one fourth of the tax on the annualized ECTI allocable to B, or $8.75 (.25 × ($100 × .35)). PRS fails to make any installment payments. PRS's operations actually result in $100 of ECTI allocated to B. Therefore, PRS was required to have paid 1446 tax of $35 on or before the due date, without extensions, for filing its Form 8804 which is June 15, Year 2 (the last date prescribed for payment of the 1446 tax). PRS does not file Forms 8804 or 8805.

(iii) B pays estimated taxes and makes the following payments on the following dates: June 15, Year 1—$20, September 15, Year 1—$15, and January 15, Year 2—$10. B's total estimated tax payments equal $45. B files its U.S. Federal income tax return timely on June 15, Year 2, and reports all effectively connected income required to be shown on its return. Assume that B's total correct tax liability as shown on the return is $50. B does not make a payment with its return and so B still owes $5 to the Internal Revenue Service (excluding any interest, penalties, and additions to the tax that may apply). Assume that B is not subject to an addition to the tax under section 6654.

(iv) Under the rules of paragraph (e)(2) of this section, for purposes of sections 1446, 1461, and 1463, PRS is not considered to have paid any 1446 tax because B has not paid all of B's U.S. income tax liability.

(v) Further, under the principles of section 6655 and the rules of §1.1446–3(e), a partner's estimated tax payments will not affect the calculation of a partnership's addition to the tax. Accordingly, PRS will be liable under the principles of section 6655 and §1.1446–3 for failing to withhold for each installment payment. The addition to the tax will accrue beginning with the due date of each installment payment on the $8.75 underpayment for each respective installment period and will continue to accrue until June 15, Year 2 (the date prescribed in paragraph (b)(2)(v)(C) of this section).

(vi) Further, beginning on June 15, Year 2 (the last date prescribed for payment of 1446 tax without extensions), PRS will be liable for interest under section 6601 with respect to the unpaid 1446 tax, $35. This interest will stop accruing on the earlier of the date that the 1446 tax is paid by PRS or is deemed paid under paragraph (e)(2) of this section by reason of B's payment of its full tax liability.

(vii) Further, beginning on June 15, Year 2 (the due date for filing Form 8804), PRS will be liable for the addition to the tax under section 6651(a)(1) for failing to file Form 8804. This addition to the tax accrues on the amount required to be shown as the 1446 tax liability on Form 8804, $35. This addition to the tax will accrue at the rate of 5 percent per month until the date that PRS files Form 8804 for Year 1, or the maximum accrual of the penalty (25 percent of the tax required to be shown on the return) under that section has been reached.

(viii) PRS may be liable for other penalties and additions to the tax for its failure to withhold or to furnish statements to its foreign partner B. See §1.1461–3 for a list of the penalties that may apply.

*Example 2. Foreign partnership fails to pay 1446 tax but sole foreign partner pays all tax required to be shown on the partner's U.S. income tax return.* The facts are the same as *Example 1*, except that B pays $5 with the filing of B's return and has therefore paid all tax required to be shown on B's return within the meaning of paragraph (e)(2) of this section.

(i) For purposes of sections 1446, 1461, and 1463, PRS is deemed to have paid its 1446 tax liability under paragraph (e)(2) of this section as of the later of the date that B is considered to have paid its tax under section 6513(a) and (b)(2) (June 15, Year 2) and the last date for PRS to pay its 1446 tax without extensions (also June 15, Year 2). Therefore, PRS is deemed to have paid all of its 1446 tax liability as of June 15, Year 2. PRS has no continuing liability for 1446 tax under section 1461, however, additions to the tax, interest, and penalties may apply.

(ii) For purposes of section 6655 and §1.1446–3, under paragraph (e)(2) PRS is deemed to have paid its 1446 tax on June 15, Year 2. Even if B had fully paid its tax liability as of March 15, Year 2, the rule in paragraph (e)(2) of this section would not deem PRS to have paid its 1446 tax until June 15, Year 2. As a result, B's estimated tax payments will have no effect on PRS's calculation of its addition to the tax. The addition to the tax under 6655 and §1.1446–3 shall begin to accrue on each installment date with respect to the underpaid installment ($8.75), and will stop accruing on June 15, Year 2, the date prescribed in paragraph (b)(2)(v)(C) of this section.

(iii) Because PRS is deemed to have paid its full 1446 tax liability as of June 15, Year 2 (the last date prescribed for payment of 1446 tax without extensions), PRS is not subject to an interest charge under section 6601, or a failure to file penalty under section 6651 (see section 6651(b)(1)).

(iv) PRS may be liable for other penalties and additions to the tax for its failure to withhold or to furnish statements to its foreign partner B. See §1.1461–3 for a list of the penalties that may apply.

(v) If PRS had several foreign partners, PRS would conduct the same analysis as set forth above with respect to each partner. That is, under paragraph (e) of this section, PRS may be deemed to have paid 1446 tax with respect to the ECTI allocable to some but not all of its foreign partners.

*Example 3. Domestic partnership fails to pay 1446 tax but sole foreign partner fully pays all tax required to be shown on partner's U.S. income tax return.* The facts are the same as *Example 2*, except that PRS is a domestic partnership whose last date prescribed for paying 1446 tax without extensions (*i.e.*, generally the unextended due date for Form 8804) is April 15, Year 2.

(i) For purposes of sections 1446, 1461, and 1463, PRS is deemed to have paid its 1446 tax liability on the later of the date that B is considered to have paid tax under section 6513(a) and (b)(2) (June 15, Year 2) and the last date for paying 1446 tax without extensions (*i.e.*, the unextended due date for Form 8804, April 15, Year 2). Accordingly, PRS is not considered to have fully paid its 1446 tax liability until June 15, Year 2. PRS has no continuing liability for 1446 tax under section 1461, however, additions to the tax, interest, and penalties may apply.

(ii) For purposes of section 6655 and §1.1446–3, PRS is subject to an underpayment addition to the tax that accrues on the same amount as in *Example 1* and *Example 2* because PRS is not deemed to have paid 1446 tax under paragraph (e)(2) of this section until June 15, Year 2. The addition to the tax will stop accruing on the date prescribed in paragraph (b)(2)(v)(C) of this section (*i.e.*, April 15, Year 2, the due date, without extensions, for filing Form 8804).

(iii) For purposes of section 6601, as of the last date prescribed for paying 1446 tax without extensions (April 15, Year 2), PRS has not paid or been deemed to have paid any 1446 tax. Accordingly, the interest charge under section 6601 shall begin to accrue on April 15, Year 2, and shall accrue until the 1446 liability is paid or deemed to have been paid. In this case, the interest charge will accrue until June 15, Year 2, the date that PRS is deemed to have paid its 1446 tax under paragraph (e)(2) of this section.

(iv) For purposes of section 6651(a)(1), as of April 15, Year 2, PRS's amount required to be shown as tax on its Form 8804 is $35. This amount cannot be reduced under section 6651(b)(1) because PRS is not deemed to have paid 1446 tax under paragraph (e)(2) of this section until June 15, Year 2, a date falling after the last date for PRS to pay its 1446 tax, April 15, Year 2. Accordingly, the failure to file penalty will begin to accrue on April 15, Year 2 (filing due date for Form 8804), and shall stop accruing on the earlier of the date that PRS files Form 8804 or the maximum accrual of the penalty (25 percent of the amount required to be shown as tax on the return) is reached.

(v) PRS may be liable for other penalties and additions to the tax for its failure to withhold or to furnish statements to its foreign partner B. See §1.1461–3 for a list of the penalties that may apply.

(f) *Effect of withholding on partner.* The payment of the 1446 tax by a partnership does not excuse a foreign partner to which a portion of ECTI is allocable from filing a U.S. tax or informational return, as appropriate, with respect to that income. Information concerning installment payments of 1446 tax paid during the partnership's taxable year on behalf of a foreign partner

shall be provided to such foreign partner in accordance with paragraph (d) of this section and such information may be taken into account by the foreign partner when computing the partner's estimated tax liability during the taxable year. Form 1040NR, ''U.S. Nonresident Alien Income Tax Return,'' Form 1065, ''U.S. Return of Partnership Income,'' Form 1120F, ''U.S. Income Tax Return of a Foreign Corporation,'' or such other return as appropriate, must be filed by the partner, and any tax due must be paid, by the filing deadline (including extensions) generally applicable to such person. Pursuant to paragraph (d) of this section, a partner may generally claim a credit under section 33 for its share of any 1446 tax paid by the partnership against the amount of income tax (or 1446 tax in the case of tiers of partnerships) as computed in such partner's return. See §1.1446–3(e)(3)(ii) for rules permitting a partner to reduce its addition to tax under section 6654 or section 6655.

[T.D. 9200, 70 FR 28717, May 18, 2005, as amended by T.D. 9394, 73 FR 23074, Apr. 29, 2008]

### § 1.1446–4 Publicly traded partnerships.

(a) *In general.* This section sets forth rules for applying the section 1446 withholding tax (1446 tax) to publicly traded partnerships. A publicly traded partnership (as defined in paragraph (b) of this section) that has effectively connected gross income, gain or loss must pay 1446 tax by withholding from distributions to a foreign partner. Publicly traded partnerships that withhold on distributions must pay over and report any 1446 tax as provided in paragraph (c) of this section, and generally are not to pay over and report the 1446 tax under the rules in §1.1446–3. The amount of the withholding tax on distributions, other than distributions excluded under paragraph (f) of this section, that are made during any partnership taxable year, equals the applicable percentage (defined in paragraph (b)(2) of this section) of such distributions. For penalties and additions to the tax for failure to comply with this section, see §§1.1461–1 and 1.1461–3.

(b) *Definitions*—(1) *Publicly traded partnership.* For purposes of this section, the term publicly traded partnership has the same meaning as in section 7704 (including the regulations thereunder), but does not include a publicly traded partnership treated as a corporation under that section.

(2) *Applicable percentage.* For purposes of this section, applicable percentage shall have the meaning as set forth in §1.1446–3(a)(2), except that the partnership or nominee required to pay 1446 tax may not consider a preferential rate in computing the 1446 tax due with respect to a partner.

(3) *Nominee.* For purposes of this section, the term nominee means a domestic person that holds an interest in a publicly traded partnership on behalf of a foreign person.

(4) *Qualified notice.* For purposes of this section, a qualified notice is a notice given by a publicly traded partnership regarding a distribution that is attributable to effectively connected income, gain or loss of the partnership, and in accordance with the notice requirements with respect to dividends described in 17 CFR 240.10b–17(b)(1) or (3) issued pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a). See paragraph (d) of this section regarding when a nominee is considered to have received a qualified notice.

(c) *Paying and reporting 1446 tax.* The withholding tax required under this section is to be paid pursuant to the rules and procedures of section 1461, §§1.1461–1, 1.1461–2, and 1.6302–2, as supplemented by the rules of this section. However, the reimbursement and setoff procedures set forth in §1.1461–2 shall not apply. A withholding agent under this section must use Form 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,'' and Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' to report withholding from distributions under this section. See §1.1461–1(b). Further, a withholding agent under this section may obtain a refund for 1446 tax paid in accordance with section 1464 and the regulations thereunder. See §1.1446–3(d)(1)(iv) and (vii) (relating to a foreign trust or estate that holds an interest in a publicly traded partnership) and §1.1446–